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6 Attorney for Defendant
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON
10 The Honorable Stanley A. Bastian

11 United States of America,
12
13 Plaintiff,
14
15 v.
16 David Elmo Curry,
17 Defendant.

No. 1:21-CR-2053-SAB

Trial Brief

Jury Trial
December 4, 2023, 8:30 a.m.
Yakima, Washington

18 The defendant, David Elmo Curry, hereby submits his trial brief
19 in advance of the jury trial set on December 4, 2023.

Alleged Offenses, Status of the Case

20 Mr. Curry is charged in a two-count Indictment with Count 1 –
21 Attempted Enticement of a Minor, in violation of 18 U.S.C. §§ 2422(b),
22 and with Count 2 – Attempted Enticement of a Minor, in violation of 18
23 U.S.C. §§ 2422(b). Count 1 is alleged to have occurred on November 16,
24 2019. As part of the Netnanny multiple agency sting operation, Detective
25 Morgan posted an ad on Craig’s List. Mr. Curry responded to the ad in

1 the hope of paying an adult female for sexual intercourse with said adult
2 female. Detective Morgan posing as the mother of two children (11 and
3 13) and seeking an adult male to provide her children with the same type
4 of favorable sexual treatment that she received growing up, quickly
5 steered the sexual activity towards her made up children. Mr. Curry
6 ultimately was arrested at the sting house with the requested lube and
7 condoms. Mr. Curry was arrested and charged in Yakima County
8 Superior Court. Mr. Curry anticipates presenting a general denial and/or
9 entrapment defense at trial in relation to Count 1.

13 Count 2 is alleged to have occurred on or between December 12,
14 2019, and February 4, 2020. Mr. Curry posted an ad on the online adult
15 dating website Doublelist looking for casual sex with an adult female.
16 HSI Special Agent Dramis responded to the ad pretending to be a 13-
17 years old female. The two adults engaged in (at times sexually explicit)
18 an email and text message exchange for approximately 2 ½ months until
19 Mr. Curry stopped responding to Detective Dramis' messages. Though
20 discussed, no meeting for sexual intercourse ever took place. Mr. Curry
21 intends on presenting a general denial and/or entrapment defense at trial
22 in relation to Count 2.

1 Mr. Curry is the only potential defense witness, should he choose to
2 testify. Additionally, the defendant has reserved the right to call the
3 government's witnesses if necessary to present its case-in-chief. The
4 defense is relying upon the subpoenas of the government. The evidence
5 largely consists of the email/text message exchanges, exchanged
6 photographs, and the recorded post-miranda audio/video recording of Mr.
7 Curry.
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10 The case is currently set for a jury trial on December 4, 2023, in
11 Yakima, Washington. The defense anticipates that the trial will last 3-4
12 days. Mr. Curry is out-of-custody and lives in Clarkston, Washington.
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14 Defense has requested that the government provide the
15 unaltered/unfiltered photograph of a female Kennewick Detective that
16 was exchanged in an altered/filtered state to appear as the 13-years old
17 female as a part of the government ruse in Count 2. The government
18 originally provided defense with a redacted altered/filtered version of the
19 photograph. Upon request the government subsequently provided the
20 defense with an unredacted altered/filtered version of the photograph.
21 The defense anticipates that the government will provide the requested
22 photograph before trial if it exists. Otherwise, it is counsel's
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1 understanding that the government has provided all of the discovery in
2 its possession.

3 **Anticipated Factual and Legal Issues**

4
5 The defense anticipates that the evidence presented for Count 1 will
6 revolve around the communication between Detective Morgan and Mr.
7 Curry. There were written communications in the form of email and
8 texts. Additionally, photos were exchanged. Mr. Curry arrived at the
9 sting house, was arrested, searched incident to arrest, and interviewed
10 post-*Miranda*. From a defense standpoint there is sufficient evidence to
11 support both a general denial and an entrapment defense. The case law
12 is clear that a defendant does not need to concede that he committed the
13 crime in order to be entitled to an entrapment instruction.¹ Furthermore,
14 the defendant is entitled to present his theory of defense and only slight
15 evidence raising the issue of entrapment is necessary to entitle the
16 defendant to submit it to the jury.²
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24 ¹ See *United States v. Demma*, 523 F.2d 981, (9th Cir. 1975); cf. *United States v.*
25 *Paduano*, 549 F.2d 145, 148 (9th Cir. 1977).

² See *United States v. Gurolla*, 333 F.3d 944, 951 (9th Cir. 2003).

1 Similar to Count 1, the defense anticipates that the evidence at trial
2 for Count 2 will revolve mainly around the exchanged communication
3 between Detective Dramis and Mr. Curry. There were emails, text
4 messages, photographs, and videos exchanged between the two starting
5 as early as December 12, 2019, shortly after Mr. Curry was arrested and
6 charged in Yakima County Superior Court as part of the multi-agency
7 Netnanny investigation. Mr. Curry believes that there is sufficient
8 evidence to support both a general denial and/or entrapment defense.
9 Mr. Curry anticipates that the evidence presented at trial will show a
10 lack of predisposition to commit the crime(s) prior to contact by
11 government agents as well government inducement. When an
12 entrapment defense is sufficiently raised then it becomes a complete
13 defense. One in which the government must prove that the defendant
14 was not entrapped beyond a reasonable doubt.

15 16 17 18 19 20 **Proposed Final Jury Instructions**

21 Mr. Curry has filed his proposed Final Jury Instructions. There is
22 concern from a defense perspective that the jury will be confused by the
23 jury instructions. The defense has provided slight modifications to the
24 Ninth Circuit Model Jury Instructions where necessary to provide the
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1 jury with a better understanding and clarification. Additionally, the
2 defense has proposed additional instructions to define words for the jury.³
3 While the Court is not required to provide additional definitions for the
4 terms (persuade; induce; entice; coerce) it seems prudent to do so.⁴
5

6 It is important for the jury to understand what the crime in fact is.
7 “In attempt cases, the crime at issue is “attempting to persuade, induce,
8 entice, or coerce [a minor] to engage in sexual activity with him—
9 not...attempting to engage in sexual activity with [a minor].”⁵ The
10 defendant’s proposed jury instructions attempt to avoid the
11 misapplication of the law by the jury.
12

13 Finally, as noted above, the defense anticipates that it will be able
14 to meet the low threshold of “slight evidence” necessary to receive an
15 Entrapment Instruction for both counts.⁶ Additional language has been
16 proposed in the Entrapment instruction to address a statement made by
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21 ³³ See ECF No. 88 at pgs. 30-33.

22 ⁴ See *United States v. Dhingra*, 371 F.3d 557, 567 (9th Cir. 2004).

23 ⁵ See Model Crim. Jury Instr. 9th Cir. 20.29 (2023) (Comment), (citing *United*
24 *States v. McCarron*, 30 F.4th 1157, 1163 (9th Cir. 2022).

25 ⁶ See *United States v. Gurolla*, 333 F.3d 944, 951 (9th Cir. 2003).

1 the defendant in his post-*Miranda* interview which the defense
2 anticipates will be presented in the government's case-in-chief.⁷
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4 Trial Notice – Voir Dire

5 Defense counsel anticipates that based on the nature of the charges
6 that additional time will be necessary for Voir Dire. For sensitive
7 matters a potential juror may request to be interviewed without the rest
8 of the jury panel present. Furthermore, Defense Counsel requests that
9 time be allotted for the parties to question the jury panel during Voir Dire
10 in addition to questions by the Court.
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14 Dated: November 27, 2023.

15
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⁷ See ECF No. 88 at pgs. 34, 36.

Certificate of Service

I hereby certify that on November 27, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following: Michael D. Murphy, Assistant United States Attorney.

s/ Craig D. Webster
Craig D. Webster